IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 129 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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SHRI RAJU @ BHARAT VISHWESHWAR MISHRA - Applicant(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR HR PRAJAPATI for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
DS AFF.NOT FILED (R) for Respondent(s) : 2,
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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 17/02/2006

ORAL JUDGMENT

1.Raju @ Bharat Vishweshwar Mishra, petitioner has filed this petition under Article 226 of the Constitution of

India challenging the externment order dated 3/10/2005 passed by the Deputy Police Commissioner, Ahmedabad under the provisions of Section 56(B) of the Bombay Police Act, 1951 externing the petitioner for a period of two years which has been confirmed by the order of the Deputy Secretary, Home Department vide order dated 21/12/2005 as being illegal, invalid, null and void, suffers from total non-application of mind, without authority of law, against the principles of natural justice and violative of Articles 14, 19 and 21 of the Constitution of India. Petition was filed on 24/1/2006. On 25/1/2006, this Court has issued Rule which was returnable on 8/2/2006. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. So, with consent of parties, matter has been taken up for final disposal.

2.Mr.H.R.Prajapati, learned advocate appears for the petitioner. The learned advocate for the petitioner has stated that in this case, the Assistant Commissioner of Police has issued show cause notice on 12-19/7/2004 as to why the petitioner should not externed for a period of two years. The petitioner has filed interim reply on 20/8/2004 against the said show

cause notice. Thereafter in September, 2004, some witnesses were examined and final reply was filed on 13/12/2004.

3. The learned counsel has submitted that thereafter the Deputy Commissioner of Police has passed an externment order dated 3/10/2005. The authority, while passing the order of externment, did not give any reason as to why there is a delay in passing the order of externment in this behalf.

4. Being aggrieved and dissatisfied with the same, the petitioner has filed appeal before the appellate authority somewhere on 16/11/2005 and though the petitioner has raised this contention of delay before the authority, the authority has not considered the same and confirm the order of externment vide order dated 21/12/2005.

5. The learned counsel for the petitioner has stated that order of externment is required to be quashed and set aside only on the ground that the authority has passed the order of externment after unreasonable delay. The authority has not explained the delay. Even the

appellate authority has also not given any reasons in this behalf. In support of the same, the learned counsel for the petitioner has relied upon the judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol in Special Criminal Case No.1451 of 2005 decided on 1/12/2005.

6. On behalf of respondent, Mr.L.R.Pujari, learned APP has tried to support the order of externment in this behalf. The authority has not filed affidavit for explaining the delay in this behalf.

7. Having heard both the learned advocate for the parties and perused the material and evidence on record, in my view, the show cause notice is issued on 12-19/7/2004 whereas the order of externment was passed on 3/10/2005. In the body of the order, the authority has not explained the delay. Therefore, in my view, there is unexplained delay. Therefore, the order of externment deserves to be quashed and set aside on the ground of delay.

8. I have considered the facts and circumstances of the case. In view of the principles laid down and the

judgment of this Court in Special Criminal Application No.1451 of 2005 (supra), the contention of the learned advocate for the petitioner is required to be accepted. The authority could not pass the said order. Petition is required to be allowed. Order of externment as well as order of the appellate authority is required to be quashed and set aside.

9. In view of the same petition is allowed. Order of externment dated 3/10/2005 is quashed and set aside and order dated 21/12/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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